



22 February 2023

FINAL STATEMENT

**SAMSUNG HEAVY INDUSTRIES MARTIN LINGE PROJECT CRANE ACCIDENT
WORKERS SUPPORT TEAM AND KOREAN TRANSNATIONAL CORPORATIONS WATCH**

VS.

TOTALENERGIES E&P NORGE AS, EQUINOR ASA, TECHNIP ENERGIES N.V.

As stated in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a Specific Instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available. As Specific Instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

This final statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to examine the issues raised in the submission. This statement also identifies recommendations made by the NCP to the enterprise on the implementation of the Guidelines.

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1 EXECUTIVE SUMMARY

Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team (Workers Support Team) and Korean Transnational Corporations Watch (KTNC Watch) (the complainants) filed a complaint on 20 March 2019 to the National Contact Points (NCPs) of Korea, France and Norway, against Samsung Heavy Industries Co., Ltd. (Samsung HI), Technip Energies N.V., Equinor ASA, TotalEnergies SE and its subsidiary TotalEnergies E&P Norge AS (TEPN) (company names are updated).¹ In this specific instance, TEPN was assisted by TotalEnergies SE in providing any information needed on TotalEnergies Group policy. The British NCP was later included in the specific instance since TechnipFMC, party to the specific instance prior to Technip Energies, is headquartered in the UK.²

The specific instance concerns a crane accident in Korea at Samsung HI's Geoje Shipyard on 1 May 2017, during the construction of an oil platform module for the Martin Linge project on the Norwegian continental shelf. Six workers died and 25 workers were injured. Furthermore, the complainants assert that at least 150 workers were traumatised by witnessing the accident and are subsequently in need of treatment.

The buyer of the module was a joint venture composed of TEPN, Equinor and Petoro. TEPN was the operator. Samsung HI and Technip Energies formed the consortium of contractors engaged by the joint venture to build the module for the Martin Linge project.

As the specific instance now stands, the complainants claim that the companies have violated the OECD Guidelines for Multinational Enterprises³ with reference to Chapter II (General Policies), paragraphs A10 and A11, Chapter IV (Human Rights), paragraphs 1, 2, 5 and 6, and Chapter III (Disclosure), paragraph 1-3. The complainants argue that the companies did not conduct proper due diligence to identify and mitigate the risk of a crane collision. Further to this, the complainants argue that TEPN and Technip Energies caused the accident and that Equinor contributed to the accident and that they should provide for or cooperate in remediation with respect to the victims of the accident, who have not received help or compensation, and in improving safety at shipyards. The complainants also assert that the companies should disclose an investigation report produced by TEPN, Technip Energies and Samsung HI.

¹ KTNC Watch and Workers Support Team (20 March 2019) Complaint to National Contact Point for the OECD Guidelines for Multinational Enterprises. [20190320-Complaint-from-KTNC-Watch.pdf \(regjeringen.no\)](https://www.regjeringen.no/en/dep/utd/press/2019/03/20190320-Complaint-from-KTNC-Watch.pdf)
KTNC Watch and Workers Support Team (24 July 2019) Response to Norway NCP concerning the complaint.

² In February 2021, TechnipFMC plc announced the creation of two independent, publicly traded companies: TechnipFMC and Technip Energies. The latter is party to this specific instance and headquartered in France. Total S.A. changed name in June 2021 to TotalEnergies SE.

³ OECD (2011) OECD Guidelines for Multinational Enterprises. OECD Publishing.
<http://dx.doi.org/10.1787/9789264115415-en>

The handling of the complaint was divided into two processes. The Korean NCP handled the issues in the complaint related to the Korean company, Samsung HI. The Norwegian NCP was lead NCP for handling the issues related to the companies headquartered in Europe.

The Norwegian NCP accepted the complaint and offered the parties mediation. The parties did not reach an agreement during the mediation. The NCP proceeded to conduct an examination of the issues put forward in the complaint, in line with the NCP's Procedural guidelines for handling specific instances.⁴

The NCP concludes that the companies involved in the specific instance handled by the Norwegian NCP – TEPN, Equinor, Technip Energies – did not cause or contribute to the accident. They are, however, directly linked to the accident by their business relationship with Samsung HI. Samsung HI caused the accident and, with respect to remedy for the victims of this case, the Korean NCP recommends that it take necessary remedial measures if any additional victims, not included in the examination by the Korean NCP, are identified.

The Norwegian NCP makes recommendations to the companies in this specific instance on three topics: due diligence and stakeholder engagement; leverage and remedy; and disclosure.

First, the NCP recommends that companies include meaningful stakeholder engagement with workers and see to it that workers' voices are heard in the due diligence process. Meaningful stakeholder engagement is a key component throughout the due diligence process. Workers are a central stakeholder at shipyards, and in the oil and gas sector in general.

Second, the NCP recommends that the companies use their leverage with Samsung HI to the extent possible to deliver on the recommendations made by the Korean NCP on remedy for the victims of the accident and that Samsung HI include the complainants in the process. The NCP recommends that the companies use their leverage with Samsung HI, on their own or through sector-wide initiatives, to encourage Samsung HI to seek collaboration with other Korean shipbuilders and the Korean government to strengthen due diligence in the sector, actively address systemic issues affecting health and safety at Korean shipyards, such as multi-layer subcontracting, and address the lack of efficient and systematic trauma management for victims of industrial accidents.

Lastly, the NCP recommends that the companies follow up their good intentions in the mediation process and, in the spirit of the OECD Guidelines, share parts of the investigation report with the complainants, in a way that does not jeopardise trust in the industry's investigation of accidents. The recommendations are explained in more detail in section 4.

⁴ National Contact Point Norway (2014) [Procedural guidelines for handling specific instances – NCP Norway](#).

2 BACKGROUND AND PROCEEDINGS

2.1 THE NCP AND ITS ROLE

The OECD Guidelines for Multinational Enterprises (the OECD Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.

The OECD Guidelines are supported by National Contact Points (NCPs), established by adhering governments to promote and implement the Guidelines. The NCPs provide a mediation and conciliation platform for resolving issues that may arise from the alleged non-observance of the Guidelines in Specific Instances.

The Norwegian NCP consists of four independent experts and is supported by a secretariat. The NCP promotes and raises awareness about the OECD Guidelines and handles Specific Instances in accordance with the Procedural Guidance of the OECD Guidelines and the Procedural guidelines for handling specific instances - NCP Norway.⁵

2.2 THE PARTIES

The complainants are Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team (Workers Support Team) and Korean Transnational Corporations Watch (KTNC Watch). The Workers Support Team is a coalition of Korean NGOs established after the accident to support workers who were injured or traumatised due to the crane collision at Samsung HI's shipyard.⁶ KTNC Watch is a coalition of Korean NGOs that advocate for human rights and the protection of the environment and local communities against corporate malfeasance.⁷

TotalEnergies is a multinational multi-energy company headquartered in France. It is present in more than 130 countries. TotalEnergies EP Norge AS (TEPN) was assisted in this case by TotalEnergies SE in providing any information needed on TotalEnergies Group policy. TEPN performs exploration and production activities on the Norwegian continental shelf. The company

⁵ National Contact Point Norway (2014) [Procedural guidelines for handling specific instances – NCP Norway](#).

⁶ Members: Masan Changwon Geoje Movement Association for Workers' Health and Safety (MCGMAWHS), Korean Metal Workers' Union Legal Center, MINBYUN-Lawyers for a Democratic Society KYUNGNAM.

⁷ Members: Advocates for Public Interest Law (APIL), Corporation for All, Gong Gam Human Rights Law Foundation, Korean Confederation of Trade Unions (KCTU), Korean Federation for Environmental Movement (KFEM), Korean House for International Solidarity (KHIS), Korean Lawyers for Public Interest and Human Rights (KLPH), MINBYUN-Lawyers for a Democratic Society's Labor Committee.

is wholly owned by TotalEnergies SE and is consequently part of the TotalEnergies Group. Technip Energies N.V. is a multi-national engineering and technology company, headquartered in France and present in 34 countries. Equinor ASA is an international energy company, based in Norway and operating in more than 30 countries. Samsung Heavy Industries Co., Ltd. (Samsung HI) is one of the 'Big 3' in shipbuilding in Korea and one of the largest shipbuilders in the world.⁸ It is headquartered in South Korea and is part of the Samsung Group, South Korea's largest conglomerate.⁹

2.3 THE COMPLAINT

The complaint was submitted to the NCPs in Korea, France and Norway on 20 March 2019 by Workers Support Team and KTNC Watch against Samsung Heavy Industries, Technip Energies, Equinor, TotalEnergies SE and its subsidiary TotalEnergies E&P Norge (TEPN).

The complaint concerned a crane accident on 1 May 2017 at Samsung HI's Geoje Shipyard during the construction of a module for an oil platform for the offshore Martin Linge project in Norway. Six workers died and 25 were physically injured. The complainants asserted that more than 300 workers witnessed the accident. At least 150 of these, according to the complainants, are suffering from trauma due to the accident and need treatment. However, only 14 workers were officially recognised at the time as suffering from industrial injuries caused by trauma resulting from this accident.

The Martin Linge project refers to a unitised area on the Norwegian continental shelf comprising three Norwegian production licenses. The unit is held by a joint venture, which, at the time of the accident, was composed of TEPN (51%), Petoro AS (30%) and Statoil Petroleum AS (now Equinor Energy AS (Equinor), 19%). TEPN was the operator on behalf of the joint venture. After the accident took place, in March 2018, TEPN assigned its entire participating interest to Equinor, which has since been the operator (holding 70%).

Samsung HI and Technip Energies formed the consortium of contractors engaged by the joint venture to build the platform module for the Martin Linge project. Samsung HI is the owner of the Geoje Shipyard and was responsible for the construction of the platform. Technip Energies was the leader of the consortium and responsible for the design of the platform.

The NCP found the complaint somewhat unclear regarding what the complainants wanted to achieve and requested clarification from the complainants. On the basis of the complaint and

⁸ Zeymarine (30 July 2022) [Top 10 Largest Shipbuilding Companies in the World 2022 | Zeymarine](#)

⁹ Statista (5 October 2022) [South Korea: leading conglomerates by revenue 2022 | Statista](#)

these clarifications, the NCP found that the main issues for the complainants were to uncover the causes of the accident and, together with the enterprises, find measures to reduce risks in the shipbuilding industry in Korea to avoid similar accidents in the future. This would include disclosure of an investigation report on the accident by some of the companies. Furthermore, the complainants aimed to achieve remediation for workers traumatised by the accident – referred to as “the unofficial victims”.

The NCP’s Final Statement is based on the complainants’ updated allegations in their written submission on how they view the issues following termination of the mediation process. The complainants claimed that the enterprises had violated the OECD Guidelines after a change was made to the platform’s design and consequently to the construction method. This change required a different type of crane, which allegedly increased the risk of collision between the cranes as the range of operation for the new crane type (jib crane) overlapped with the other crane (gantry crane). The complainants claimed that all the enterprises involved failed to conduct adequate due diligence and use their leverage with Samsung HI, which could have prevented the accident from happening. They referred to the OECD Guidelines, Chapter II (General Policies), paragraphs A10, A11 and Commentary 19, and Chapter IV (Human Rights) paragraphs 1, 2 and 5. The complainants also stated that the enterprises refused to disclose an investigative report¹⁰ about the accident, contrary to Chapter III (Disclosure), paragraphs 1, 2 and 3. Furthermore, they claimed that all the enterprises should address the adverse impacts and provide for or cooperate through legitimate processes in remediation. They referred to Chapter II (General Policies), paragraph A 11 and Chapter IV (Human Rights), paragraph 6, of the OECD Guidelines.¹¹

2.4 RESPONSE FROM THE COMPANIES

In their responses to the complaint, all three companies expressed their deepest condolences to the families of the deceased, the injured workers and all those affected by the accident at Samsung HI’s shipyard on 1 May 2017.

Regarding the complainants’ allegations of inadequate due diligence, TEPN stated in their response of 25 October 2019 that they considered that they have acted in accordance with best industry practice, applicable laws and the OECD Guidelines. According to TEPN, the role of the joint venture, represented by its operator, is to conduct due diligence to ensure that the consortium’s health, safety and environment (HSE) Management Systems are in place and to audit

¹⁰ The report was produced after the accident by a Joint Investigation Committee comprising representatives from TEPN, Technip Energies and Samsung HI.

¹¹ The complainants’ allegations are updated according to their written submission on how they view the issues after the mediation process (October 2022).

these systems. TEPN carried out due diligence in a diligent way, the company stated. TEPN underlined that the consortium was responsible for the method of construction and that it is best industry practice that the owner of the construction yards (Samsung HI) remains solely responsible for the HSE facilities, employees and subcontractors. Concerning disclosure of the investigation report, TEPN referred to the assignment of all its interests to Equinor in March 2018, which then became the operator. They stated that TEPN therefore no longer has rights to information relating to the Martin Linge project.

Regarding the issue of disclosure, Equinor stated in its response to the complaint of 7 February 2020 that the company was “as a matter of Norwegian law, bound by confidentiality provisions in the applicable contracts”.¹² With reference to the alleged violations of Chapter II (General Policies) and Chapter IV (Human Rights) of the OECD Guidelines, Equinor asserted that the complaint does not describe how Equinor has violated provisions under these chapters and does not include documentation of Equinor’s alleged wrongdoing. Equinor therefore found that these allegations were insufficiently substantiated to merit further examination.

In their response to the complaint of 7 February 2020, Technip Energies stated that the complainants’ allegations appeared to relate to Samsung HI’s activities at the Geoje shipyard. Technip Energies underlined that Samsung HI and Technip Energies had different and specific roles in the consortium, with Samsung HI being responsible for the construction of the platform module. Technip Energies claimed, like TEPN, that it is best industry practice for the owner of the construction yard to remain solely responsible for the HSE facilities, employees and subcontractors. Technip Energies asserted that the issues in the complaint could best be addressed by a process including Samsung HI and the complainants. However, with reference to the ongoing court proceedings in Korea at the time, Technip Energies argued that the NCPs should suspend further examination of the complaint until the conclusion of the Korean court proceedings.

The companies’ responses are published on the Norwegian NCP’s website. They are summarised in the Initial Assessment by the NCP.¹³

¹² Equinor (7 February 2020) Response to the complaint, p. 2.

¹³ The Norwegian NCP (13 May 2020) Initial Assessment: KTNC Watch and Workers Support Team vs. Samsung HI, TechnipFMC, Equinor, Total and its subsidiary Total E&P Norge AS (TEPN) [20200513-Initial-Assessment.pdf \(regjeringen.no\)](https://www.regjeringen.no/20200513-Initial-Assessment.pdf)

2.5 INITIAL ASSESSMENT AND SUBSEQUENT PROCEEDINGS

After receiving the complaint on 20 March 2019, the Korean, French, British and Norwegian NCPs coordinated the handling of the specific instance.¹⁴ The Korean NCP suggested that the handling of the complaint be divided into one Korean and one European process. It was thus decided that the Korean NCP would handle the issues raised concerning Samsung HI. Since TEPN and Equinor are based in Norway and the Martin Linge field is located on the Norwegian continental shelf, the NCPs in France, the UK and Norway agreed that the Norwegian NCP should be the lead NCP for handling the issues concerning the companies headquartered in Europe, in close collaboration with the French and British NCPs. The Korean and Norwegian NCPs agreed to keep each other informed throughout the process. The Korean NCP accepted the complaint concerning Samsung HI and offered the parties in Korea its good offices in its Initial Assessment of 25 June 2019.¹⁵

The Norwegian NCP published its Initial Assessment on 13 May 2020.¹⁶ The NCP came to the following conclusions in handling the Specific Instance:

NCP Norway finds that this specific instance will contribute to the purpose and effectiveness of the Guidelines. The complaint involves a serious accident which resulted in several deaths and injuries. It addresses the issue of adequate due diligence prior to the accident and the responsibility of the enterprises involved, both in relation to an operator and other participants in a joint venture, as well as a consortium of contractors. The complaint addresses the issue of disclosure and transparency in terms of the operations of the enterprises involved to find out how the accident could have happened. NCP Norway notes that the confidentiality obligations between the parties involved appear to be based on contracts only. This would imply that the involved parties may expressly consent to disclose any relevant documents. The complaint also addresses the enterprises' duty to respect human rights and the issue of remediation of adverse human rights impacts.¹⁷

The NCP assessed the question of parallel proceedings in its Initial Assessment. There were two ongoing court proceedings in Korea at the time related to the accident at Geoje Shipyard. One was a criminal case against Samsung HI alleging violations of precautionary safety measures in the Occupational Safety and Healthy Act. The other court proceeding was a civil case involving 14

¹⁴ OECD (2019) Guide for National Contact Points on Coordination when handling Specific Instances, OECD Guidelines for Multinational Enterprises, page 5, footnote 3: "In practice, a lead NCP is the NCP which takes the primary responsibility for the handling of a specific instance and holds decision making power with respect to the process. A supporting NCP may have a relationship to the specific instance and be involved in an assisting capacity." <http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

¹⁵ Korean NCP (25 June 2019) Initial Assessment of the complaint from the Workers Support Team and KTNC Watch. http://www.ncp.or.kr/servlet/kcab_encp/info/4001

¹⁶ The Norwegian NCP (13 May 2020) Initial Assessment: KTNC Watch and Workers Support Team vs. Samsung HI, TechnipFMC, Equinor, Total and its subsidiary Total E&P Norge AS (TEPN) [20200513-Initial-Assessment.pdf \(regjeringen.no\)](http://www.regjeringen.no/20200513-Initial-Assessment.pdf)

¹⁷ The Norwegian NCP (13 May 2020) Initial Assessment, p. 14.

workers who had received compensation from the state that they deemed inadequate. The Norwegian NCP stated in the Initial Assessment that the case handling in Norway covered other enterprises and other issues than the court proceedings in Korea. Further to this, the Norwegian NCP found that the case handling in Europe would have a broader scope than the specific instance handled by the Korean NCP. The Norwegian NCP thus concluded that the court proceedings and the parallel case in Korea were not obstacles to handling the issues raised in the complaint.

Consequently, the NCP offered its good offices to the enterprises headquartered in Europe: TEPN, TotalEnergies SE, Technip Energies and Equinor. Knut Kaasen, Professor dr. juris, and Mats Ruland, Court of Appeal judge and Chief State Mediator were approved by the parties and appointed by the NCP to mediate the dialogue. The NCP also invited Samsung HI to participate as an active party together with the other companies, given Samsung HI's central role in the issues raised in the complaint and that its participation could make a positive contribution to resolving the issues brought forward by the complainants. A pre-mediation meeting was held on 3 February 2020, after which the Europe-based enterprises accepted the invitation to participate in dialogue and mediation. Samsung HI initially agreed to participate as an observer. In December 2021, Samsung HI declined an invitation to participate as an active party in the mediation.

Due to the COVID-19 pandemic, the mediation meetings were held virtually. The mediation started in March 2021 and was terminated in August 2022. A total of 11 plenary meetings were held with the parties, including the pre-mediation meeting in February 2021. The number of participants was up to 26 persons, including two mediators, two interpreters and two to three persons from the NCP secretariat. In addition, a technician assisted with the set-up of the meetings. In the first two meetings, the NCP had to accommodate for three time zones with participants from the US, Europe and South Korea. Thereafter, the participants were from Europe and South Korea. In addition to the plenary meetings, the mediators had 13 separate meetings with the parties, as well as numerous written exchanges. The NCP secretariat did not take part in these meetings and exchanges. A summary of the proceedings of the NCP is included as Annex 1.

2.6 OUTCOME OF THE GOOD OFFICES

The good offices involved a long process into which the parties invested much time and effort together with experienced and skilled mediators. Despite serious efforts from both sides, the distance between the parties proved unbridgeable and no agreement was reached.

The Norwegian NCP commends the parties for their strong commitment to the process over a long period of time. The NCP regrets that due to the COVID-19 pandemic there was no other option than digital mediation, which undeniably influenced the process negatively and prolonged the process. This specific instance is complex, involving many parties with different languages and cultural backgrounds, as well as geographical locations in different time zones. Meetings were

spread out over time, which weakened the dynamics of the process. The NCP is of the opinion that physical mediation concentrated over a limited number of days with full focus on the case would have been favourable. This is also the opinion of the mediators. It is the NCP's experience that the parties having the opportunity to communicate directly and in person greatly benefits the mediation process. Physical mediation does not guarantee an agreement, but it increases the prospect of doing so.

The Norwegian NCP also finds that having two separate specific instance processes related to the same facts, in Korea and Norway respectively, was not beneficial for the mediation process. The NCP respects the choice and the consideration of the Korean NCP that two processes, with Korean and European actors respectively, seemed best at the time and commend the Korean NCP's efforts to bring Samsung HI to the table at a later stage. Unfortunately, Samsung HI was unwilling to participate in a joint process. The fact that the main actor, the builder and owner of the shipyard where the accident happened, was not at the table together with the other companies precluded substantial discussions on key issues. Samsung HI could have provided essential information about the reasons for the accident and the different companies' relationship to the accident. Samsung HI's participation would also have provided a better basis for discussions on remedy for the victims and the improvement of health and safety in the Korean shipbuilding industry. The specific instance provides lessons learned for the companies, but also for the NCPs with regard to coordination of complaints involving several companies and NCPs.

3 EXAMINATION OF THE SPECIFIC INSTANCE

According to the Norwegian NCP's Procedural guidelines for handling specific instances, the NCP will examine the complaint if mediation is unsuccessful. In this section, the NCP will review all the available information and reach a conclusion as to whether the recommendations set out in the OECD Guidelines have been observed. This also entails making recommendations.¹⁸

This specific instance concerns a serious accident with disastrous consequences; an accident which killed six people, injured 25 and left many workers traumatised.

As stated in the Initial Assessment, and further specified by the complainants in a written submission after the mediation process, the complaint raised three main issues. First, whether the companies conducted adequate due diligence with respect to a change of crane type, and whether the companies tried to prevent and mitigate increased risks by using their leverage with Samsung HI. Second, the complaint raised the issue of disclosure of an investigation report about the accident by TEPN, Technip Energies and Samsung HI. Third, the complaint concerned

¹⁸ Norwegian NCP (2 June 2014) Procedural guidelines for handling specific instances, pp. 9-10.

remediation in terms of help and compensation for victims traumatised by witnessing the accident and measures to improve safety at shipyards.

Nearly three and a half years passed from the NCP's receipt of the complaint until the termination of the mediation process. The mediation lasted 18 months. Because of the long duration and possible developments in opinions concerning facts and relevant norms, the NCP invited the parties to send written submissions on how they currently see the issues raised in the complaint. The NCP's subsequent examination is based on these written submissions as well as the information provided by the companies earlier in the process.

The NCP finds that the positions of the parties have not changed substantially. Rather, they have become more clear-cut and more clearly defined in line with the language of the OECD Guidelines. The complainants claimed that the companies have caused or contributed to the accident and thus have a responsibility to ensure remedy for the victims of the accident who have not received help or compensation. The companies rejected allegations of having caused or contributed to the adverse impacts, but acknowledged that under the Guidelines they are directly linked to the accident by their business relationship with Samsung HI. The companies recognised that, under the OECD Guidelines, this link entails that the companies may take a role in remediation but are not expected to provide for the remedy themselves.

3.1 DUE DILIGENCE FOR RESPONSIBLE BUSINESS CONDUCT

3.1.1 INPUT FROM THE COMPLAINANTS

The complainants' conclusion was that TEPN and Technip Energies caused the accident and that Equinor contributed to the accident, each "by failing to fulfil its responsibility to identify and supervise potential adverse impacts on workers by SHI's dangerous working methods and inadequate safety measures", with reference to the OECD Guidelines, Chapter II (General Policies), paragraphs A10, A11 and Commentary 19 and Chapter IV (Human Rights), paragraphs 1, 2 and 5.¹⁹ These paragraphs read as follows:

Chapter II General Policies

Enterprises should:

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and

¹⁹ Workers Support Team and KTNC Watch (28 October 2022) Written submission, p. 5.

potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

Commentary 19: If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.

Chapter IV Human Rights

Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.²⁰

Given the size, nature and context of the shipbuilding industry and the severity of risks of adverse human rights impacts related to the overlapping cranes, the complainants argued that the companies should have carried out more comprehensive and stringent human rights due diligence. Furthermore, the companies should have conducted risk-based due diligence to ensure that the consortium had an adequate health, safety and environmental (HSE) management system in place, not only by telling Samsung HI what to do, but also by monitoring and supervising Samsung HI. According to the complainants, the companies “failed to require SHI to prepare a separate risk assessment and safety measures specific to overlapping of cranes and identify and address when SHI did not carry out appropriate measures to prevent the identified risk”. The

²⁰ OECD (2011) OECD Guidelines for Multinational Enterprises.

complainants also alleged that the companies failed to use their leverage as set forth in the OECD Guidelines.²¹

A central issue in the complaint is the risk of adverse impact related to the use of a gantry and a jib crane in the construction of the Martin Linge platform module. According to the complainants, the use of this method is highly unusual in the sector and entails an increased risk of collision due to the overlapping range of the cranes. The complainants referred to a ruling against Samsung HI of 23 June 2022 by the High Court of Korea. According to the complainants, the High Court concluded that Samsung HI did not have any risk assessments in place for the risk of cranes overlapping, as required in the Occupational Safety and Health Act of Korea, nor were any safety measures put in place specifically for the overlapping of a gantry and a jib crane. The complainants claimed that the companies were aware of the change of work method and involved in the decision to use a jib crane and should have ensured that safety measures were implemented according to HSE regulations or measures at that time.²²

3.1.2 RESPONSE FROM THE COMPANIES

With respect to exercising due diligence, the companies have explained that TEPN was the operator of the joint venture when the accident happened while Equinor was a non-operating participant in the joint venture. Technip Energies and Samsung HI, in the consortium hired by the joint venture, had different contractual responsibilities. Technip Energies was responsible for engineering, procurement (except for bulk and living quarters) and commissioning. Samsung HI was responsible for procurement (bulk and living quarters), fabrication and construction in Korea, transport and load-out. This included that Samsung HI was responsible for procedures and method statements for simultaneous operations.²³

Clearly, Samsung HI had a central role in relation to the accident but is not part of the Norwegian NCP's handling of this specific instance. Regarding the companies in the process led by the Norwegian NCP, the operator has the central role. According to the Norwegian Petroleum Act of 1996 the licensee (in this case, TEPN, Equinor and Petoro) has a "see to duty", which implies that "the licensee shall see to it that anyone performing work for him, either personally, through employees or through contractors or subcontractors, shall comply with the provisions laid down in or pursuant to the Act" (Section 10-6, second paragraph). The "see to duty" also implies that

²¹ Workers Support Team and KTNC Watch (28 October 2022) Written submission, pp. 3-4.

²² Workers Support Team and KTNC Watch (28 October 2022) Written submission, pp. 2-3.

²³ Technip Energies (27 October 2022) Written submission, p. 2.

the licensee shall make sure that anyone carrying out work for the licensee is qualified (Section 9-7).²⁴

The NCP underlined in the Initial Assessment that it is beyond the remit of the NCPs to pronounce judgements on the basis of applicable law. However, respecting domestic law and regulation is the first and foremost obligation of the companies, and existing legislation can inform the reasoning of NCPs' assessment of a specific instance.²⁵ The NCP thus finds that TEPN as the operator of the joint venture is the most central actor in the Norwegian process and will therefore be the main focus of the NCP's examination.

3.1.2.1 TEPN AS OPERATOR OF THE MARTIN LINGE PROJECT

TEPN asserted that the company conducted appropriate due diligence, both in the procurement phase, during the construction phase and after the accident, in line with its role as operator. This role entailed "no supervision or control of the yard operations".²⁶ The due diligence prior to entering into the contract, TEPN stated, included a thorough assessment of the tenderers' HSE performance, including HSE/safety statistics and recent HSE performance, HSE management system, HSE culture, HSE performance and HSE behaviour improvement programme. Furthermore, Samsung HI's safety record from 2008-2012, according to TEPN, was considered best in class compared to other bidders.²⁷ The HSE evaluation also included on-site visits to the tenderers' yards.²⁸ In conclusion, TEPN found that Samsung HI's safety performance proved superior to other bidders.

The NCP notes that the police report after the accident and the ruling against Samsung HI in June 2022 seem to indicate that Samsung HI's safety performance deteriorated in the period after signing of the contract. The Korean police refer to a total of 14 safety incidents, including one fatal accident and several crane incidents, in the period from 2014 until the accident in 2017. The police link the poor safety performance to the hiring of a new head of the Geoje Shipyard in 2014, who did not ensure that countermeasures were implemented.²⁹

According to TEPN, the company was not informed about safety performance, including incident records, relating to other construction projects carried out at the yard for Samsung HI's other clients. TEPN received HSE reports submitted by Samsung HI and Technip Energies, with HSE statistics for the project (for example, number of man-hours, number of injuries, number of

²⁴ Act No. 72 of 29 November 1996 relating to petroleum activities.

[Act 29 November 1996 No. 72 relating to petroleum activities - The Norwegian Petroleum Directorate \(npd.no\)](#)

²⁵ Norwegian NCP (13 May 2020) Initial Assessment, p. 12.

²⁶ TEPN (28 October 2022) Written submission, p. 9

²⁷ TEPN (28 October 2022) Written submission, p. 9.

²⁸ TEPN (25 October 2019) TEPN's reply to the complaint, p. 3.

²⁹ Gyeongnam Geoje Police Station (30 July 2017) Written Statement, p. 4.

induction courses), which demonstrated that safety performance on the Martin Linge project was good until the accident. TEPN's internal records show that by the end of March 2017, a few weeks before the accident, the Martin Linge project had reached the milestone of 10 million man-hours LTI free. LTI means Lost Time Injury, which refers to an accident causing physical injury that prevents the person from returning to work the following day.³⁰ At the same time, Equinor had a significant presence at the Geoje yard as the operator for the largely parallel construction work on the Johan Sverdrup project and did not identify risks of a crane accident. On the contrary, in 2018 the Johan Sverdrup project was awarded the Equinor CEO's HSE award after 31 months without any serious HSE incidents.³¹ The NCP finds it reasonable that TEPN considered safety management systems to be in place in the Martin Linge project.

However, during the due diligence process TEPN identified a potential HSE challenge, described as "potential extreme high activity which might dilute the TENDERER's (SHI) good HSE performance and capacities".³² TEPN developed a mitigation plan for this specific risk, which included the deployment of a TEPN HSE team at the yard to contribute to a consistent safety culture and awareness among managers and workers in the Martin Linge construction project. TEPN HSE personnel took part in joint safety rounds on-site and weekly HSE meetings, where safety matters were discussed, and on which basis, Samsung HI would clarify or define actions. According to TEPN, the HSE team made observations of cranes on several occasions during the weekly meetings, which were followed up in a workshop for all signallers and crane operators in July 2016.³³

The complainants alleged that the companies caused or contributed to the accident by failing to identify and mitigate the risk of crane collision between the jib and gantry cranes and by failing to use their leverage with Samsung HI. According to the OECD Due Diligence Guidance for Responsible Business Conduct (2018), which provides practical support to enterprises on the implementation of the OECD Guidelines' due diligence recommendations, an enterprise causes an adverse impact if the enterprise's activities on their own are sufficient to result in the adverse impact. An enterprise contributes to an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. The activity in question should substantially increase the risk of adverse impact and does not include minor or trivial contributions.³⁴

³⁰ TEPN (28 October 2022) Written submission, p. 8.

³¹ Equinor (28 October 2022) Written submission, p. 6.

³² TEPN (28 October 2022) Written submission, p. 9.

³³ TEPN (28 October 2022) Written submission, p. 10.

³⁴ OECD (2018) [OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct](#), Q29, p. 70, in line with the OECD Guidelines for MNEs Ch II General Policies A12.

The guidance suggests several factors that can be taken into account in considering whether an enterprise has contributed to an adverse impact. One factor is the extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring. Another factor is the extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability. A third factor is the degree to which any of the enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.³⁵

The NCP does not find that TEPN caused the accident. The company's activities were clearly not on their own sufficient to result in the adverse impact. Regarding contributing to the adverse impact, the NCP does not find that TEPN encouraged or motivated an adverse impact by another entity. The question is whether the company could or should have known about the risk of the crane collision and if any of the company's activities reduced the risk of adverse impacts. According to the OECD Due Diligence Guidance, an enterprise can seek to prevent and mitigate actual or potential impacts linked to its business relationships by building expectations into business relationships such as establishing pre-qualification or bidding criteria based on responsible business standards. It can also use leverage to effect change in business relationships and support business relationships in the prevention or mitigation of adverse impacts.³⁶

The NCP finds that TEPN had a thorough pre-qualification process during which it identified a risk of Samsung HI's HSE performance being compromised due to potential extreme high activity. TEPN therefore placed a HSE team on-site which took part in walks and meetings with Samsung HI and used its leverage with Samsung HI on a regular basis throughout the construction phase.

Regarding the foreseeability of what, in the complainants' view, was an increased risk of a crane collision between the jib and the gantry crane, TEPN seemed to follow up crane operations on a general basis and not specifically for this crane operation. The NCP notes that, according to TEPN, lifting operations are conducted on a daily basis at construction yards such as Geoje and that the gantry crane moves along several quays all day, to serve all projects simultaneously in progress along those quays.³⁷ According to the police, the Samsung HI Health and Safety Management Regulations state that when new work orders are issued and/or when they are modified, a risk-level assessment must be performed and detailed safety measures must be created, but this was not done with respect to the overlapping jib and gantry cranes.³⁸ However, the police refer to safety measures and procedures that were in place, but that the follow-up of measures and procedures was generally inadequate. For example, onsite managers and supervisors were aware

³⁵ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q29, p. 70.

³⁶ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q34-35, p. 77.

³⁷ TEPN (10 June 2021) TEPN's Responses to Questions from the Complainants p. 5.

³⁸ Gyeongnam Geoje Police Station (30 July 2017) Written Statement, p. 4.

of poor compliance with the signaller safety rules. This was also known by the head of the Geoje Shipyard, responsible for HSE at the yard, who allowed this to continue.³⁹

According to TEPN, it is the yard operator who has the appropriate knowledge and competency to evaluate safety risks and determine and control appropriate measures, such as interfaces between simultaneous operations on neighbouring projects.⁴⁰ TEPN, as the operator, had the responsibility to ensure that HSE management was in place. The NCP recalls that TEPN did make observations on cranes and signalling at several meetings and asked Samsung HI to organise a workshop for all signallers and crane operators, which was conducted in July 2016. However, the ruling against Samsung HI in June 2022, which concluded that the company had not taken reasonable safety measures to prevent the crane accident, in accordance with the police report, could raise questions with respect to how diligently TEPN tracked implementation of measures. The NCP notes that TEPN regularly received HSE reports from the consortium and followed these up based on their knowledge. The NCP finds that TEPN is not responsible for the apparent negligence on the part of Samsung HI's staff.

The NCP recalls that the OECD Due Diligence Guidance states that “the mere existence of a business relationship or activities which create the general conditions in which it is possible for adverse impacts to occur does not necessarily represent a relationship of contribution. The activity in question should substantially increase the risk of adverse impact”.⁴¹ The NCP also recalls that, according to the OECD Due Diligence Guidance:

Each enterprise in a business relationship has its own responsibility to identify and address adverse impacts. The due diligence recommendations of the OECD Guidelines for MNEs are not intended to shift responsibilities from governments to enterprises, or from enterprises causing or contributing to adverse impacts to the enterprises that are directly linked to adverse impacts through their business relationships. Instead, they recommend that each enterprise addresses its own responsibility with respect to adverse impacts. In cases where impacts are directly linked to an enterprise's operations, products or services, the enterprise should seek, to the extent possible, to use its leverage to effect change, individually or in collaboration with others.⁴²

The OECD Due Diligence Guidance also states that an enterprise's relationship to adverse impact is not static and may change as situations evolve. One factor could be that an enterprise gains knowledge of potential or actual adverse impacts that it intentionally does not act upon.⁴³ The

³⁹ Gyeongnam Geoje Police Station (30 July 2017) Written Statement, p. 5.

⁴⁰ TEPN (28 October 2022) Written submission, p. 7.

⁴¹ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q29, p. 70, in line with OECD Guidelines for MNEs Ch II General Policies A12.

⁴² OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, p. 17.

⁴³ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q29, p. 71.

NCP does not find that this is the case for TEPN, nor for the other companies. Based on information on what TEPN did to identify and prevent and mitigate risks related to the Martin Linge project and how the company used its leverage with Samsung HI, the NCP does not find that TEPN contributed to the accident.

TEPN demonstrates lessons learned and the NCP welcomes that the TotalEnergies Group has taken several steps after the accident to advance safety both in its own and in suppliers' operations. The Group has updated the contractual requirements for its suppliers; increased on-site human rights audits of suppliers; engaged in industry-wide collaborative initiatives standards for contracted yards and human rights assessment frameworks; updated the Group's Golden Rule on lifting, including the requirement to perform a risk assessment, implement a lift plan, clearly mark out the area and designate a signaller.⁴⁴ The complainants have, in their written submission, provided a list of conditions that they ask the companies to consider and integrate in purchasing practices and contractual terms for ship and plant construction in the future. It is important that lessons learned are also developed through stakeholder engagement. The NCP welcomes that the Group is developing a new tool to launch surveys and collect feedback directly from workers, including subcontractors, via their mobile phones.⁴⁵

The NCP finds that TEPN did not cause or contribute to the accident but is directly linked to the adverse impact by a business relationship.

3.1.2.1.1 DUE DILIGENCE AND STAKEHOLDER ENGAGEMENT

Based on the material received from TEPN, the NCP finds that TEPN in general has conducted thorough due diligence. However, the NCP finds room for improvement when it comes to stakeholder engagement. The OECD Due Diligence Guidance states that meaningful stakeholder engagement is important throughout the due diligence process and that “engaging with impacted and potentially impacted stakeholders and rightsholders may be especially relevant when an enterprise is: [...] engaging in assessment of business relationships with respect to real or potential adverse impacts”.⁴⁶ The Guidance also states that enterprises should carry out periodic assessments of business relationships, to verify that risk mitigation measures are being pursued or to validate that adverse impacts have actually been prevented or mitigated.⁴⁷

The workforce on the Martin Linge project was a central stakeholder and a potentially rich source of information for TEPN in the assessment of Samsung HI with respect to identifying actual or potential adverse impacts, developing countermeasures, and tracking the effectiveness of

⁴⁴ TEPN (28 October 2022) Written submission, p. 11.

⁴⁵ TEPN (28 October 2022) Written submission, p. 11.

⁴⁶ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q10, p. 50.

⁴⁷ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, step 4.1 b, p. 32

implemented measures. The complainants point to several issues, including dangerous work orders, time pressure and increased risks due to multi-level subcontracting.⁴⁸

According to TEPN, the contract with Samsung HI included requirements for the contractor to continually reinforce personnel awareness of risks and challenges and knowledge of associated control measures, through specified measures. During the construction phase, TEPN stated that TEPN HSE personnel was tasked to support and encourage SHI managers and workers involved in the Martin Linge construction project to constantly apply an active safety attitude. Furthermore, TEPN HSE personnel participated in joint on-site safety tours with Samsung HI.⁴⁹ However, the NCP has not been informed that workers or workers' representatives were included in TEPN's follow-up after the accident. Nor has the NCP been informed to what degree two-way engagement with workers or workers' representatives was ensured in TEPN's due diligence prior to award of the contract, such as in contract requirements to Samsung HI, or during the construction phase. The OECD Due Diligence Guidance states that stakeholder engagement involves interactive processes and is characterised by two-way communication where "enterprise and stakeholders freely express opinions, share perspectives and listen to alternative viewpoints to reach a mutual understanding".⁵⁰

The importance of stakeholder engagement, in this case with workers, is confirmed by measures taken post-accident by the TotalEnergies Group, such as the development of a new feedback tool for workers.⁵¹ The feedback tool for workers, including subcontractors, is an important improvement. The NCP encourages its implementation as soon as possible

3.1.2.2 EQUINOR

Regarding Equinor, the company was a non-operating interest holder in the Martin Linge joint venture at the time of the accident. It is the operator's role and responsibility to develop requirements and systems for incorporating HSE in project development on behalf of the licensee and to handle this in day-to-day-operations, according to Equinor. This is to avoid a "patchwork of possibly contradicting corporate HSE standards, which could ultimately undermine HSE performance", Equinor stated, and referred to the role of the non-operating partner as more limited and at an overarching level. Yet, the accident led to follow-up and initiatives to improve overall safety performance, both in Equinor as well as in the industry.⁵² The NCP accepts this explanation of the distribution of roles.

⁴⁸ Workers Support Team and KTNC Watch (28 October 2022) Written submission, p. 8.

⁴⁹ TEPN (28 October 2022) Written submission, pp. 9-10.

⁵⁰ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q9, p. 49.

⁵¹ TEPN (28 October 2022) Written submission, p. 11.

⁵² Equinor (28 October 2022) Written submission, p. 5.

The NCP finds that Equinor did not contribute to the accident but is directly linked to the adverse impact by a business relationship.

3.1.2.3 TECHNIP ENERGIES

Technip Energies stated that the company took several due diligence steps in the procurement process. This included assessing Samsung HI's Code of Conduct, experience and safety records regarding these kinds of projects, as part of Technip Energies' formal processes and questionnaire.⁵³ It is understood that Technip Energies reached the same conclusion as TEPN: that Samsung HI proved best among the bidders.

Regarding risks onsite related to lifting operations and overlapping booms, Samsung HI had, according to Technip Energies, implemented risk-reducing measures and developed detailed lifting and movement plans for each critical lifting activity. Technip Energies stressed that the company undertook due diligence to confirm that Samsung HI had the necessary policies, processes and procedures in place, but was not in a position to detect violations or deviations to internal yard rules such as human errors uncovered by the police investigation after the accident.⁵⁴

Technip Energies argued that it is best industry practice that the shipyard owner is responsible for safety at the yard and that there are good reasons for this. Shipyards such as Geoje are vast, complex areas with multiple ongoing projects for different clients. Technip Energies asserted that Samsung HI is highly experienced in undertaking and organising such projects and rightly has the responsibility for implementing safety systems relating to these activities. According to Technip Energies, the shipyard is highly regulated and subject not only to Samsung HI's internal procedures, but also to common rules for major Korean yard manufacturers that specifically address lifting operations, as well as national standards from the Korea Occupational Safety & Health Agency. Technip Energies stated that lifting activities were conducted at the Geoje yard on a large scale and that co-activity and cranes overlapping with the gantry crane were normal procedures from construction got underway on the Martin Linge module. According to Technip Energies, Samsung HI had internal processes to align tower crane booms with gantry crane movements, which was also the case with the jib crane.⁵⁵ However, as the NCP understands, the ruling against Samsung HI on 23 June 2022 stated that the company did not have processes for the gantry and jib cranes in place.

⁵³ Technip Energies (10 June 2021) Response to Complainants' Queries, p. 7.

⁵⁴ Technip Energies (10 June 2021) Response to Complainants' Queries, p. 8.

⁵⁵ Technip Energies (10 June 2021) Response to Complainants' Queries, p. 6.



Overview of the SHI Yard. Construction of the Martin Linge module took place on Quay 7. The red square indicates the approximate location of the area dedicated to the construction of the Martin Linge topsides (illustration provided by TEPN).

The complainants alleged that Technip Energies, like TEPN, caused the accident by failing to identify and mitigate the risk of crane collision and by failing to use their leverage with Samsung HI. According to the OECD Due Diligence Guidance, an enterprise causes an adverse impact if the enterprise's activities on their own are sufficient to result in the adverse impact. As stated above, this is clearly not the case for TEPN, nor for Technip Energies.

The OECD Due Diligence Guidance also explains how an enterprise may contribute to an adverse impact, as presented above in section 3.1.2.1 (page 15). The NCP finds that Technip Energies has sufficiently explained the background and reasoning for the separate contractual responsibilities between Technip Energies and Samsung HI and why it is considered best practice that the shipyard owner has sole responsibility for operations and safety at the yard, covering a vast area of multiple projects for different clients. However, the NCP has little information on how Technip Energies followed up Samsung HI and used its leverage with Samsung HI during the construction phase to reduce the risk of negative impacts such as crane collisions, but it is informed by TEPN that the operator regularly received HSE reports from Samsung HI and Technip Energies. The NCP has not received information on how or whether Technip Energies involved workers or workers' representatives in a stakeholder dialogue before signing a contract with Samsung HI, during the construction phase or after the accident. The NCP finds room for improvement with respect to

these issues, but the NCP does not find that Technip Energies encouraged or motivated an adverse impact or that it ignored the foreseeability of an adverse impact.

The NCP finds that Technip Energies did not cause or contribute to the accident but is directly linked to the adverse impact by a business relationship.

3.2 DISCLOSURE OF THE ACCIDENT REPORT

After the accident, TEPN, Technip Energies and Samsung HI prepared an internal investigation report. The complainants asserted that the report may contain information on the relationships between workers and other stakeholders, which is necessary to uncover the root cause of the accident, provide remedy for victims and prevent future accidents. Therefore, they have requested disclosure of the report on the basis of the OECD Guidelines, Chapter III (Disclosure). There it is stated that: enterprises should ensure disclosure of timely and accurate information on all material matters regarding their activities; disclosure policies of enterprises should include material information on foreseeable risk factors and issues regarding workers and other stakeholders, and; enterprises are also encouraged to communicate additional information that could include information on the enterprises' policies relating to matters covered by the Guidelines, information on internal audits, risk management and information on relationships with workers and other stakeholders.⁵⁶

Rights and entitlements to relevant documents, information and data were transferred to Equinor in March 2018, after the assignment of TEPN's interests to Equinor which then became operator of the Martin Linge project. In Equinor's written response to the complaint in 2020, the company underlined that it is bound by confidentiality provisions in the applicable contracts with the other companies and cannot lawfully disclose any documents produced by the parties in response to the incident.⁵⁷ In the Initial Assessment, the NCP suggested that the companies could overcome this obstacle by agreeing to disclose the report.

In its written submission of 2022, Equinor asserted that the OECD Guidelines do not set out that a company is obliged to provide access to one specific document, report or source of information, as claimed by the complainants. The investigation report falls outside the type of more general information about a company and its operations (referred to in paragraph 1 and 2). Furthermore, Equinor stated, the Guidelines speak to what information a company shall disclose about its own and not a third party's operations and activities.⁵⁸

⁵⁶ OECD (2011) OECD Guidelines for Multinational Enterprises, Ch. III (Disclosure), paragraphs 1; 2 f, g; 3 a, d, e.

⁵⁷ Equinor (7 February 2020) Response to the complaint, p. 2.

⁵⁸ Equinor (28 October 2022) Written submission, pp. 7-8.

Technip Energies explained, in its written submission of 2022, the companies' concern regarding disclosure of the report, with reference to the following points: (i) the investigation report concerns the operations of a third party (i.e. SHI) and their contractors; (ii) it would potentially prejudice the human rights of individuals who may still be the subject of ongoing legal action; (iii) it could inhibit the willingness of individuals and business partners to openly contribute to any future safety investigations; and (iv) it could potentially be used for the purpose of pursuing legal proceedings in another forum.⁵⁹ TEPN underlined that investigations of this nature are important industrial good practice for learning and that confidentiality ensures trust in the process and the willingness of all parties to participate.⁶⁰

Although Equinor did not find that the OECD Guidelines support the complainants' demand for access to an internal investigation report, the company was willing to share the report with the complainants and used its leverage during the mediation process vis-a-vis other stakeholders (also Samsung HI) in order to obtain consent to share the report in part or in full. Over the course of the mediation process, the respondents agreed in different ways to share key recommendations as part of a possible agreement with the complainants. However, this option was excluded when the mediation was terminated, according to Equinor.⁶¹

In the NCP's opinion, Equinor deserves credit for initiating disclosure of the investigation report, as do TEPN and Technip Energies for agreeing to disclose parts of the report (including Samsung HI). The two latter parties have presented valid reasons for why partial confidentiality is paramount to maintain trust in processes that involve investigating adverse impacts.

The NCP underlines that although disclosure of the investigation report is not directly covered by the OECD Guidelines, transparency in general is in the spirit of the Guidelines. Step five in the due diligence process is to communicate externally relevant information on, among other topics, due diligence activities conducted to identify and address actual adverse impacts, including the findings and outcomes of these activities. However, the Guidance acknowledges that communication should be carried out with due regard to commercial confidentiality and suggests certain approaches in communicating information, such as limiting access to sensitive information and providing a valid explanation or justification for why the information has not been shared.⁶²

⁵⁹ Technip Energies (27 October 2022) Written submission, pp. 2-3.

⁶⁰ TEPN (28 October 2022) Written submission, p. 13.

⁶¹ Equinor (28 October 2022) Written submission, p. 8.

⁶² OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q47, pp. 86-87.

3.3 LEVERAGE AND REMEDY

The complainants alleged that TEPN and Technip Energies caused the accident and that Equinor contributed to the accident. The complainants stated that in accordance with Chapter II (General Policies), paragraph A 11 and Chapter IV (Human Rights), paragraph 6, companies should address adverse impacts and provide for or cooperate through legitimate processes in remediation of adverse human rights impacts.

On the assumption that the companies have caused or contributed to the accident, the complainants requested that the companies recognise their responsibility for the accident and provide the following remedies:

- formal apology for not preventing the accident
- creation of funds through joint contributions both for the victims of the accident and for all victims of accidents and diseases in the shipbuilding industry, treatment and rehabilitation programmes, and local support mechanisms
- inclusion of certain conditions promoting safety, suggested by the complainants, in the companies' purchasing principles and terms of contract with suppliers
- full support for establishment of industry-specific due diligence guidance for safety and health of workers, by acknowledging the structural problems in the field with prevailing dangers, and provision of all necessary resources in the process of developing such guidance.⁶³

As stated above, the NCP has not found that the companies have caused or contributed to the accident, but that they are directly linked to the adverse impact by a business relationship. The OECD Due Diligence Guidance states that in cases where impacts are directly linked to an enterprise's operations, products or services, the enterprise should use its leverage to influence the entity causing the adverse impact to prevent or mitigate the impact.⁶⁴ The companies acknowledged that they are directly linked to the adverse impact through their already explained respective roles.

It is clear from the facts and not disputed that Samsung HI has caused the accident. Though not a formal party to the process handled by the Norwegian NCP, the NCP assumes that Samsung HI will "take remedial measures for any additional victims not included in the course of the investigation" and to "devise a plan to actively seek out victims and remedial measures to be taken upon the occurrence of any future industrial accidents", as recommended by the Korean NCP.⁶⁵ The NCP notes that the complainants are critical to the mediation process in Korea and the

⁶³ Workers Support Team and KTNC Watch (28 October 2022) Written submission, pp. 7-8.

⁶⁴ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q30, Figure 2, p. 72.

⁶⁵ Korean NCP (26 October 2022) [Final Statement](#), p. 3.

Final Statement and question of what Samsung HI says it has done and is willing to do with regard to remedy for victims.⁶⁶

According to the OECD Due Diligence Guidance, the type of appropriate remedy or combination of remedies will depend on the nature and extent of the adverse impact and may include apologies, restitution or rehabilitation, financial or non-financial compensation (for example compensation funds for victims), punitive sanctions, taking measures to prevent future adverse impacts.⁶⁷

One of the main issues for the complainants was that the industry should learn from this accident and improve safety measures and management in the South Korean shipyard industry, to avoid serious accidents like the one at Geoje Shipyard in the future. The complainants asserted that the workers who were killed or injured in the accident were employed by subcontractors contracted by Samsung HI. The complainants emphasised that the practice of multi-layer subcontracting, is a common feature of the shipyard industry in South Korea and a way of outsourcing risk. This systemic challenge was highlighted in a report in 2018, commissioned by the South Korean Ministry of Employment and Labour after several shipyard accidents, including the one at Geoje Shipyard in 2017.⁶⁸ According to the report, large Korean conglomerates such as Samsung have increasingly hired temporary and subcontracted workers who receive lower pay, have fewer employment protection rights and less training compared to full-time employees and are not covered by the prime contractor's occupational accident insurance. The risk of industrial accidents is further increased by subcontractors outsourcing to third-tier workers to cut costs, which diffuse accountability and responsibility for safety measures and training. In a comment to the report, the South Korean Labour Ministry stressed that prime contractors have the best overview of risk factors at their workplaces and that it is essential to strengthen their responsibility for subcontractors' safety measures.⁶⁹

The use of subcontracting and temporary workers is prevalent in the shipbuilding industry, as well as in many other industries, and is known to diffuse responsibility for safety measures and management, thereby increasing the risk of adverse impacts. These are systemic challenges which one company cannot handle alone. Still, the OECD Due Diligence Guidance underlines, that systemic issues "nonetheless increase the risk of adverse impacts within the enterprise's own

⁶⁶ Workers Support Team and KTNC Watch (27 October 2022) Press release.

⁶⁷ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, 6.1, p. 34.

⁶⁸ Workers Support Team and KTNC Watch (20 March 2019) Complaint to National Contact Point for the OECD Guidelines for Multinational Enterprises, pp. 9-10.
The Korea Bizwire (7 September 2018) ["Outsourced Risk" : 80% of Shipyard Deaths Involve Subcontractors | Be Korea-savvy \(koreabizwire.com\)](#)

⁶⁹ Reuters (30 October 2019) [In South Korea's dangerous shipyards, subcontracted workers are most at risk | Reuters](#)
The Korea Bizwire (7 September 2018) ["Outsourced Risk" : 80% of Shipyard Deaths Involve Subcontractors | Be Korea-savvy \(koreabizwire.com\)](#)

operations or supply chain". It refers to several ways enterprises can address risks linked to systemic issues, for example to collaborate across sectors, engage government and/or identify effective existing initiatives.⁷⁰

The main actor in relation to the accident, Samsung HI, is one of the biggest shipbuilders in South Korea and part of the Samsung Group. According to the Korean NCP's Final Statement, Samsung HI is devising mid and long-term plans for improving safety in the shipbuilding industry and will accept constructive opinions after their review.⁷¹ The Norwegian NCP finds that it would be both relevant for the case and appropriate in terms of the role of the companies that Samsung HI takes a sector initiative in South Korea towards other main actors, as well as the government, to improve health and safety in the shipbuilding industry. The government in South Korea has called on prime contractors to take more responsibility for subcontractors' safety measures and management.⁷² The Korean NCP recommends Samsung HI take remedial measures for any additional victims not included in the course of the investigation and to devise a plan for remedial measures for any future industrial accidents.

With respect to industry initiatives, TEPN writes that engaging in industry-wide collaborative initiatives for harmonising standards for contracted yards through the International Association of Oil and Gas Producers (IOGP) has been part of the company's due diligence after the accident. TEPN further suggests IOGP as a relevant forum for collective discussions on safety standards for yards.⁷³ For the NCP, IOGP would appear to be a relevant channel for promoting HSE at shipyards globally and in Korea, which has the second highest level of temporary employment in OECD countries.⁷⁴

Regarding remedy for the victims, the complainants requested creation of funds based on contributions from the companies, which should cover victims of the accident of 1 May 2017 and all victims of accidents and diseases in the shipbuilding industry, as well as treatment and rehabilitation programmes and local support mechanisms. TEPN stated that, to their understanding, there are legal compensatory schemes in Korea applying to occupational accidents that cover psychological harm. TEPN underlined that the question of altering the eligibility criteria defined by Korean law to broaden access to compensation would fall under the mandate of the Korean government and/or judicial authorities.⁷⁵ To the NCP's understanding, based on a report on a public trauma management project after the accident, the high-risk group of traumatised victims was not sufficiently, continuously or properly cared for. The main reasons

⁷⁰ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q33, box 6, p. 76.

⁷¹ Korea's NCP (26 October 2022) Final Statement, p. 7.

⁷² Reuters (30 October 2019) [In South Korea's dangerous shipyards, subcontracted workers are most at risk | Reuters](#)

⁷³ TEPN (28 October 2022) Written submission, pp. 11-12.

⁷⁴ OECD (December 2022) [Employment - Temporary employment - OECD Data](#)

⁷⁵ TEPN (28 October 2022) Written submission, p. 17.

appear to be lack of specialised personnel and financial resources in the public sector, as well as the lack of an established system or plan for follow-up and treatment of traumatised victims after occupational accidents.⁷⁶

4 CONCLUSIONS AND RECOMMENDATIONS FROM THE NCP

As stated above, the NCP does not find that the companies involved in the specific instance handled by the Norwegian NCP caused or contributed to the accident. They are directly linked by a business relationship. Samsung HI is the central actor in this case and caused the accident, as the owner of the shipyard and builder of the platform module. According to the OECD Due Diligence Guidance, the enterprise that has caused or contributed to an actual adverse impact should address such impacts by providing for or cooperating in their remediation.⁷⁷ Companies that are directly linked should use their leverage to influence the entity causing the adverse impact to prevent or mitigate the impact.⁷⁸ The NCP regrets that Samsung HI was not willing to participate as an active party in a joint process with all parties, which could have contributed to substantial discussions on the circumstances of the accident and remedy for the victims.

The NCP welcomes the fact that the companies involved in the specific instance handled by the Norwegian NCP state that they have taken different steps to improve safety, based on lessons learned from the accident. The NCP encourages the companies to actively promote lessons learned from the accident and this case within their own companies, in new business relationships and in sector-wide initiatives, and include workers' voices, also from subcontractors, in the process.

Based on the information received from the parties, the NCP finds that further steps could be taken by the companies with respect to stakeholder dialogue, disclosure and leverage with Samsung HI to support observance and promote the effectiveness of the OECD Guidelines. The NCP makes the following recommendations with regard to these three topics.

1. Due diligence and stakeholder engagement

According to the OECD Due Diligence Guidance, meaningful stakeholder engagement, involving two-way communication, is a key component throughout the due diligence process. At shipyards,

⁷⁶ Gyeongnam Workers' Health Center (13 December 2017) Report on the results of the trauma management project related to the Samsung Heavy Industries crane accident.

The NCP has received a translation of key issues in the report, originally in Korean. The Center is a public agency.

⁷⁷ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, 6.1, p.34.

⁷⁸ OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Q30, figure 2, p. 72.

such as Geoje, and in the gas and oil sector in general, workers are a central stakeholder. The NCP recommends the companies to:

- include meaningful stakeholder engagement in their own policies and management systems and to include responsible business conduct and meaningful stakeholder engagement in contracts with suppliers and business relationships, as well as expectations that these conditions are passed on in the supply chain
- establish early warning systems and/or operational-level grievance mechanisms, in accordance with the OECD Guidelines, through which workers, including those employed by subcontractors, can raise issues of concern anonymously and without fear of reprisals
- consider a list of conditions that the complainants request the companies integrate in purchasing practices and contractual terms for ship and plant construction and view the suggested conditions as important inputs for engagement with workers.

2. Disclosure

In the spirit of the OECD Guidelines, which promote transparency as a general principle, the NCP recommends that the companies follow up their good intentions in the mediation process and share parts of the investigation report with the complainants, in a way that does not jeopardise trust in the industry's investigation of adverse impacts.

3. Leverage and remedy

Recalling that the Korean NCP recommends Samsung HI to take remedial measures for any additional victims not included in the course of the NCP's examination in Korea and to devise a plan for remedial measures for any future industrial accidents, the Norwegian NCP recommends the companies that are party to this specific instance to:

- use their leverage with Samsung HI, to the extent possible on their own or in collaboration with others, to deliver on the recommendations of the Korean NCP
- encourage Samsung HI to involve the complainants in this process.

The NCP recommends that the companies use their leverage with Samsung HI, to the extent possible on their own or through sector-wide initiatives, such as IOGP, to encourage Samsung HI to seek collaboration with other Korean shipbuilders and the government to:

- strengthen due diligence in the sector, according to the OECD Guidelines, especially with regard to risk assessment and implementation of detailed and relevant safety measures
- actively address systemic issues affecting health, safety and environment (HSE) in Korean shipyards, such as multi-layer subcontracting
- address the lack of efficient and systematic trauma management for victims of industrial accidents.

5 FOLLOW-UP

With this Final Statement, the NCP closes the specific instance. The NCP will invite the parties to a follow-up meeting 12 months following this Final Statement.

ANNEX 1 SUMMARY OF PROCEEDINGS BY THE NCP

Date	Action that occurred
20 March 2019	The NCP received the complaint.
5 April 2019	Email from the Korean NCP suggesting that each NCP separately handles the complaint regarding the enterprise headquartered in their country.
2 May 2019	Telephone meeting with the British, French and Norwegian NCPs to coordinate a lead NCP in Europe, deciding on the Norwegian NCP to lead.
25 June 2019	The Korean NCP's Initial Assessment published (in Korean).
24 July 2019	Response from the complainants to questions from the NCP of 13 June aimed at clarifying issues in the complaint.
30 Sep 2019	Information meeting with TotalEnergies and TEPN to explain process.
27 Oct 2019	TEPN responded to the complaint.
5 Jan 2020	Equinor and Technip Energies responded to the complaint.
13 May 2020	Initial Assessment published and good offices offered to the parties.
	Good offices and mediation action
4 and 29 Sep, 20 Oct 2020	Information meetings with TEPN, TotalEnergies, Equinor and Technip Energies; Workers Support Team and KTNC Watch, and; Samsung HI respectively.
3 Feb 2021	Virtual pre-mediation meeting with the mediators and the parties.
16 March - 18 June 2021	Virtual mediation process, with technical assistance and simultaneous interpretation. Meetings: 16 and 25 March, 22, 27 and 29 April, 30 May, 11, 14 and 18 June.
June – Dec 2021	The Norwegian NCP initiated a process, encouraged by the European parties and the mediators, to merge the mediation in Korea and Norway. Samsung HI finally declined the invitation on 20 December, pursuant to which their observer status ended.
18 Feb 2022	Mediation reconvened with plenary meeting on Zoom with the mediators and the parties. Thereafter the mediators held several separate meetings with the parties.
25 Aug 2022	The mediators informed the NCP that the parties did not reach an agreement and that the mediation process had been terminated.
26 Oct 2022	Final Statement by the Korean NCP published.
22 Feb 2023	Final Statement by the Norwegian NCP published.

